

No. 82-2113

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

ROBERT D.H. RICHARDSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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Petition for Certiorari Filed June 27, 1983
Certiorari Granted October 11, 1983

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DOCKET ENTRIES

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v

- 1. LEROY COOPER**
also known as "The Barber"
- 2. ROBERT D.H. RICHARDSON**

Crim. No. 81-104

DOCKET ENTRIES

- 03/27/81** Filed indictment (G.J. Original)
Case assigned to JUDGE JOHNSON
- 03/30/81** Bench warrant issued (and ordered on 3/27/81.
\$10,000.00 Surety Bond set.) (MAGIS-
TRATE BURNETT)
- 04/15/81** Defendant arrested.
Bench warrant returned executed, executed on
04/15/81 (issued on 3/30/81).
Defendant's first appearance.
Defendant appears with counsel
Arraignment held (Counts 1-3)
Defendant enters plea of not guilty (Counts
1-3)
- Appearance of attorney **PALMER, ALLAN
M** (praecipe) retained as counsel for deft)

- 05/18/81 Status hearing held (discovery not completed, no motions).
Trial date set for 06/22/81 @ 11:00 AM
(Counts 1-3) (per. recog.) (Rep: S. Seymour)
(JUDGE JOHNSON).
- 06/15/81 Motion for continuance filed (MOT #1) (deft. motion to continue the trial until the reappearance of Leroy Cooper, a potential witness favorable to the defense. Affidavit of Wesley McCray, Affidavit of Robert D.H. Richardson).
- 06/22/81 Trial begins - jury (Counts 1-3) (Jurors and 2 alternates sworn)
Trial held - jury (Counts 1-3)
Jury trial adjourned to 06/23/81 @ 9:30 AM
(Counts 1-3) (respited, per. recog.) (Rep: S. Seymour) (JUDGE JOHNSON)
- 06/23/81 Trial held - jury (Counts 1-3) (trial resumes, same jury and 2 alternates)
Motion made in open court for judgment of acquittal (MOT #2) (Counts 1-3) (deft's oral motion for judgment of acquittal or, in the alternative, to sever count 2).
Motion for judgment of acquittal denied (MOT #2) (and to sever count 2) (Dkt'd 06/25/81).
Jury trial adjourned to 06/24/81 @ 9:45 AM
(Counts 1-3) (respited, per. recog.) (Rep: S. Seymour) (JUDGE JOHNSON).
- 06/24/81 Trial held - jury (Counts 1-3) (Trial resumes, Juror #1 excused. Alternate #1 takes seat of #1. Jury retires to deliberate.)

Jury trial adjourned to 06/25/81 @ 9:30 AM
(Counts 1-3) (Deft. per. recog. (Rep: S.
Seymour) (JUDGE JOHNSON)

06/25/81 Trial held - jury (Counts 1-3) (Jury resumes
deliberations.) (Dkt'd 06/29/81).

Jury verdict of not guilty (Count 2) (Jury re-
sumes deliberations as to Counts 1 and 3.
Jury excused at 4:50 PM)

Jury trial adjourned to 06/26/81 @ 9:00 AM
(Counts 1, 3) (Deft. per. recog. (Rep: S.
Seymour) (JUDGE JOHNSON)

06/26/81 Trial held - jury (Counts 1, 3) (Jury resumes
deliberations. Jury unable to reach a verdict
as to Counts 1 and 3. Jury discharged.)

Order mistrial declared (Counts 1, 3) (JUDGE
JOHNSON)

Trial date set for 09/14/81 @ 10:00 AM
(Counts 1, 3) (Deft. to file motion for judg-
ment of acquittal by 7/2/81 with govt. to
respond thereafter, Court will then decide if
an oral argument is necessary. Deft. per.
recog. (Rep: S. Seymour) (JUDGE JOHN-
SON).

07/01/81 (MOT #2) (Deft. memorandum in support of
oral motion for judgments of acquittal on
counts 1 and 3 of the indictment)

07/29/81 Govt. opposition to deft's motion for judg-
ments of Acquittal

08/27/81 Motion filed (MOT #5) (Deft's motion to bar
retrial on counts one (1) and three (3) as vio-
lative of the double jeopardy provision of
the fifth amendment to the United States
Constitution)

09/11/81 Order filed denying motion of deft for judgment of acquittal on counts 1 and 3. (N)
(JUDGE JOHNSON)

Notice of interlocutory appeal (APPL #1)
(from Order dated 9/11/81 denying defts
motion for judgment of acquittal on counts
1 and 3.)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA

v.

ROBERT D.H. RICHARDSON,
Appellant.

No. 81-2029

DOCKET ENTRIES

- 09/24/81 15- Appellant's suggestion for hearing en banc (p-24)
- 09/24/81 15- Appellant's brief (m-24)
- 10-07-81 Clerk's order that subject to action by the Court on the pending suggestion for hearing, en banc, appellant's motion to waive the requirement of Rule 9, General Rules of this Court and to permit the filing of two (2) additional copies of the transcript herein, is granted
- 10-07-81 2- Additional copies of the transcript
- 10/16/81 4- Appellee's motion to extend time to file brief to 11/09/81 (m-16)

- 10/22/81 Clerk's order that appellee's motion to extend time to file brief is granted to November 9, 1981
- 11/04/81 4- Appellee's motion for leave to file motion to extend time to file brief (m-4)
- 11/09/81 Clerk's order directing Clerk to file appellee's motion to extend time to file brief and time is extended to and including November 30, 1981
- 11/09/81 4- Appellee's motion to extend time to file brief (m-4) (filed per above order)
- 11/30/81 4- Appellee's motion for suspension of briefing schedule (m-30)
- 11/30/81 4- Appellee's motion to dismiss for lack of jurisdiction (m-30)
- 12/01/81 Certified Original Supplemental Record with 1 volume of transcript (n-2)
- 12/07/81 4- Appellant's opposition to appellee's motion to dismiss for lack of jurisdiction (p-7)
- 12/09/81 4- Appellee's reply to appellant's opposition to appellee's motion to dismiss for lack of jurisdiction (m-9)
- 12/15/81 Per Curiam order, en banc, that the suggestion for hearing en banc is denied; CJ Robinson; Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs

- 12/15/81 Clerk's order that the time for filing appellee's brief is extended until 10 days after this Court rules on the pending motion to dismiss
- 02/04/82 Certified Original Supplemental Record containing 1 volume of transcript under 1 cover (n-2)
- 03/29/82 Per Curiam order that appellee's motion to dismiss is referred to the panel which will hear this case upon completion of briefing. Pursuant to the order entered December 15, 1981, appellee's brief is due within 10 days from the date of this order; Tamm (who did not participate), Ginsburg and Bork, CJs.
- 04/08/82 4- Appellee's motion for leave to file brief in xerox form, pending printing (m-8)
- 04/13/82 Clerk's order granting appellee's motion for leave to file brief temporarily in xerox form
- 04/13/82 1- Appellee's brief (m-8)
- 04/14/82 15- Appellee's brief (m-14)
- 04/14/82 15- Appellant's reply brief (p-13)
- 04/20/82 4- Appellee's motion to reschedule oral argument (m-20)
- 05/18/82 Clerk's order that the motion of appellee to reschedule argument is granted and argument herein, presently scheduled for 06/04/82, is postponed pending further order of the Court

- 10/04/82 ARGUED before Tamm, Wilkey* and Scalia, CJ's.
- 03/11/83 Opinion for the Court filed by Circuit Judge Wilkey.
- 03/11/83 Dissenting opinion filed by Circuit Judge Scalia.
- 04/05/83 15- Appellant's petition for rehearing and suggestion for rehearing en banc (p-5)
- 04/27/83 Per curiam order that appellant's petition for rehearing, filed 04/05/83, is denied; Tamm, Wilkey and Scalia, CJS
- 04/27/83 Per curiam order, en banc, that appellant's suggestion for rehearing en banc is denied; CJ Robinson, Wright, Tamm, MacKinnon, Wilkey, Wald, Mikva, Edwards, Ginsburg, Bork and Scalia, CJs (Circuit Judges Ginsburg and Scalia would grant the suggestion for rehearing en banc)

[March 27, 1981]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Criminal Case No.
	:	No. 81-00104
v.	:	Grand Jury Original
	:	21 U.S.C. 841(a); 21
LEROY COOPER	:	U.S.C. 846 (Distribution
also Known as "THE BARBER"	:	of a Controlled Substance;
ROBERT D.H. RICHARDSON	:	Conspiracy to Distribute
	:	a Controlled Substance)

The Grand Jury Charges:

COUNT ONE:

THE CONSPIRACY

1. From on or about September 22, 1980, to on or about October 21, 1980, within the District of Columbia, LEROY COOPER, also known as "THE BARBER," and ROBERT D.H. RICHARDSON, the defendants herein, knowingly, and intentionally did combine, conspire, confederate, and agree together to commit offenses against the United States of America in that they conspired together unlawfully to distribute and possess with intent to distribute quantities of heroin, a Schedule I narcotic drug controlled substance.

OBJECT

2. It was the object of said conspiracy to make money from the illegal sale of heroin.

MEANS USED TO ACHIEVE THE OBJECTS OF THE CONSPIRACY

3. Among the means used to achieve the object of the conspiracy were the following:

(a) The defendant LEROY COOPER, also known as "THE BARBER," would and did make himself available at premises including the barbershop at 1812 - 7th Street, N.W., Washington, D.C., as someone to contact if a person wished to purchase illegal heroin;

(b) Having received money from persons wishing to purchase illegal heroin, the defendant LEROY COOPER, also known as "THE BARBER," would and did take the money to the defendant ROBERT D.H. RICHARDSON.

(c) The defendant LEROY COOPER, also known as "THE BARBER," would and did purchase from the defendant ROBERT D.H. RICHARDSON quantities of illegal heroin.

(d) The defendant LEROY COOPER, also known as "THE BARBER," after delivering the heroin purchased, would and did receive payment from the purchaser or the defendant ROBERT D.H. RICHARDSON, or both, for his services in arranging the sale and delivery of the illegally purchased heroin.

OVERT ACTS

4. In order to further and achieve the object of their conspiracy, the defendants committed the following overt acts:

(a) On or about September 22, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," telephoned the defendant

ROBERT D.H. RICHARDSON for the purpose of arranging a sale of heroin.

(b) On or about September 22, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," drove to the intersection of 15th and Ives Streets, S.E., Washington, D.C., for the purpose of meeting with the defendant **ROBERT D.H. RICHARDSON** to complete a heroin transaction.

(c) On or about September 22, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," received five thousand dollars (\$5,000) for the purpose of purchasing heroin.

(d) On or about September 22, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," received from the defendant **ROBERT D.H. RICHARDSON** 55.780 milligrams of heroin and other substances in exchange for five thousand dollars (\$5,000.00).

(e) On or about September 22, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," delivered to Special Agent John W. Lee, a Drug Enforcement Administration Agent acting in an undercover capacity, 55,780 milligrams of heroin and other substances.

(f) On or about September 22, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," received from Special Agent John W. Lee, one hundred dollars (\$100.00) in payment for delivering the heroin.

(g) On or about October 21, 1980, within the District of Columbia, the defendant **LEROY COOPER**, also known as "THE BARBER," met with the defendant **ROBERT**

D.H. RICHARDSON at 1812 - 7th Street, N.W., Washington, D.C., for the purpose of arranging a heroin transaction.

(h) On or about October 21, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," drove to the intersection of Georgia Avenue and Newton Streets, N.W., Washington, D.C.

(i) On or about October 21, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," received two thousand five hundred dollars (\$2,500.00) for the purchase of heroin.

(j) On or about October 21, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," drove to the 1500 block of 9th Street, N.W., Washington, D.C.

(k) On or about October 21, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," received from the defendant ROBERT D.H. RICHARDSON 34,390 milligrams of heroin and other substances in exchange for two thousand five hundred dollars (\$2,500.00).

(l) On or about October 21, 1980, within the District of Columbia, the defendant LEROY COOPER, also known as "THE BARBER," delivered to Special Agent John W. Lee 34,390 milligrams of heroin and other substances.

COUNT TWO;

On or about September 22, 1980, within the District of Columbia, LEROY COOPER, also known as "THE BARBER," and ROBERT D.H. RICHARDSON, did unlawfully, knowingly, and intentionally distribute 55,780

milligrams of heroin and other substances, a Schedule I narcotic drug controlled substance.

COUNT THREE:

On or about October 21, 1980, within the District of Columbia, LEROY COOPER, also known as "THE BARBER," and ROBERT D.H. RICHARDSON did unlawfully, knowingly, and intentionally distribute 34,390 milligrams of heroin and other substances, a Schedule I narcotic drug controlled substance.

A TRUE BILL:

/s/ Joseph T. Thornton Jr.
FOREMAN

/s/ Charles F.C. Ruff/Esq.
CHARLES F.C. RUFF
Attorney of the United States in
and for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America

v.

Crim. No. 81-00104

Leroy Cooper a/k/a "The Barber"
Robert D.H. Richardson

**#(2) MOTION TO CONTINUE THE TRIAL UNTIL
THE REAPPEARANCE OF LEROY COOPER,
A POTENTIAL WITNESS FAVORABLE TO
THE DEFENSE**

In the instant case Mr. Richardson and Leroy Cooper are indicted in three counts alleging a (1) narcotic conspiracy 21 U.S.C. 846 and (2)(3) two counts of distributing a controlled substance 21 U.S.C. 841(a). The distributions allegedly occurred on September 22, 1980 and October 21, 1980. The instant indictment was returned on March 27, 1981 and Mr. Richardson surrendered to authorities on April 15, 1981.

In criminal number 81-00102 Leroy Cooper is indicted in five counts for distribution of narcotic drugs on September 3, 9, 16, 30, 1980 and December 5, 1980. In Criminal Number 81-00103 Leroy Cooper and Larry Wyder are indicted in three counts alleging a narcotic conspiracy and two distributions occurring on August 26 and 28, 1980. A search warrant was executed on Wyder's apartment on August 30, 1980 resulting in his being charged alone in count four with possession of a narcotic drug with intent to distribute it. In all three cases the alleged sales were similar transactions, *i.e.*, hand to hand transfers of drugs from Leroy Cooper to Agent John Lee of the D.E.A.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America

v.

Crim. No. 81-104

Leroy Cooper
a/k/a "The Barber"
Robert D.H. Richardson

MOTION TO BAR RETRIAL OF DEFENDANT
RICHARDSON ON COUNTS ONE AND THREE AS
VIOLATIVE OF THE DOUBLE JEOPARDY
PROVISION OF THE FIFTH AMENDMENT TO
THE UNITED STATES CONSTITUTION

As demonstrated in our *Memorandum* and *Reply* in support of Robert D.H. Richardson's Rule 29 motion for judgments of acquittal, the evidence adduced by the Government on the remaining counts is insufficient as a matter of law to support convictions thereon. Accordingly, since the defendant is entitled to judgments of acquittal on those counts, it would be violative of the double jeopardy provision of the Fifth Amendment to the United States Constitution to have him "run the gauntlet" of a second prosecution. *Burks v. United States*, 437 U.S. 1, (1978); *Crist v. Bretz*, 437 U.S. 28, 34 (1978); *United States v. Wiley*, 170 U.S. App. D.C. 382, 517 F.2d 1212 (1975) (n.30).

Accordingly, we respectfully request the Court to bar a second trial on the instant indictment because such trial

would twice place the defendant in jeopardy in violation of the Fifth Amendment.

Respectfully submitted,

Allan M. Palmer
1707 - N Street, N.W.
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I hereby certify that I have personally served the original and two copies of the instant motion on the office of the Clerk of this Court this 27th day of August 1981.

Allan M. Palmer

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. : Criminal No.
81-104

ROBERT D.H. RICHARDSON :

Upon consideration of defendant's motion for judgment of acquittal on Counts One and Three of the indictment, the opposition thereto, the memoranda of counsel, and the entire record herein, it is this 11th day of September, 1981,

ORDERED that the motion be, and hereby is,
DENIED.

/s/ Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----	X
UNITED STATES OF AMERICA	:
	:
v.	:
	:
ROBERT D.H. RICHARDSON,	:
	:
Defendant.	:
-----	X

Criminal Action
No. 81-104

Washington, D.C.
Monday, September 14, 1981

The above-entitled action came on for a status hearing before the Honorable NORMA HOLLOWAY JOHNSON, United States District Judge, in Courtroom No. 4, commencing at approximately 10:00 a.m.

APPEARANCES:

On behalf of the Government:
WILLIAM O'MALLEY, Esquire
Assistant United States Attorney

On behalf of the Defendant:
ALLAN M. PALMER, Esquire
Washington, D.C.

Douglas R. MacQuown, CM
Official Court Reporter

PROCEEDINGS

[Transcript p. 2] THE CLERK: Criminal Case 81-104, Robert D.H. Richardson. Mr. Palmer for the defendant. Mr. O'Malley for the Government.

THE COURT: Good morning, counsel.

MR. O'MALLEY: Good morning, Your Honor.

MR. PALMER: Good morning.

THE COURT: Now I notice you are Mr. Robert Richardson.

THE DEFENDANT: That's right.

THE COURT: All right. Mr. Richardson, you are here with your attorney today. This matter, as you know, was scheduled for trial today, but I noted that on Friday, Mr. Palmer, you appealed my denial of your Motion for Judgment of Acquittal on the grounds of double jeopardy.

MR. PALMER: Yes, Your Honor. Just as a house-keeping matter, the double jeopardy claim, of course, hinged on the ruling of Judgment of Acquittal.

Having denied the Judgment of Acquittal a fortiori, I assume that you also denied the double jeopardy claim.

THE COURT: No question about it.

MR. PALMER: So, just as a matter of record, can it also be indicated that, on September 11th, you also sought and did deny the double jeopardy claim also?

THE COURT: Yes.

* * * *

[Transcript p. 4] [THE COURT]: But it's perfectly all right with me to set a control date, if that's all right with you.

MR. PALMER: Oh yes, Your Honor. We move expeditiously inasmuch as I have already completed the appellate brief in this case and expect it to be filed pretty soon.

So we have agreed on November 16th just as a control date, if that's all right with Your Honor. It's a Monday.

OPINIONS AND JUDGMENTS BELOW

1. Judgment dismissing the appeal Pet. App. 1a-31a.
2. Denial of petition for rehearing Pet. App. 32a.
3. Denial of suggestion for rehearing en banc Pet. App. 33a.